

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Zhibin Lei et al.

Application No.: 10/677,418

Confirmation No.: 8456

Filed: October 2, 2003

Art Unit: 2452

For: SYSTEM AND METHOD FOR PROVIDING
MULTIMEDIA WIRELESS MESSAGES
ACROSS A BROAD RANGE AND
DIVERSITY OF NETWORKS AND USER
TERMINAL DISPLAY EQUIPMENT

Examiner: T. Hussain

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

As required under 37 C.F.R. § 41.37(a), this brief is filed within two months of the Notice of Appeal filed in this case on March 22, 2010, and is in furtherance of said Notice of Appeal.

The fees required under 37 C.F.R. § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

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|-------|---|
| I. | Real Party In Interest |
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| V. | Summary of Claimed Subject Matter |
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I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Hong Kong Applied Science and Technology Research Institute Co., Ltd.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 19 claims pending in application.

B. Current Status of Claims

- 1. Claims canceled: None
- 2. Claims withdrawn from consideration but not canceled: 1 – 31 and 51 – 55
- 3. Claims pending: 32 – 50
- 4. Claims allowed: None
- 5. Claims rejected: 32 – 50

C. Claims On Appeal

The claims on appeal are claims 32 – 50.

IV. STATUS OF AMENDMENTS

Applicant did not file an Amendment After Final Rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which refers to the specification and to the drawings by reference characters, is provided below. All references to the specification and drawings are made by way of example for the convenience of the Board. No limitations on the following claim language is intended.

The claimed subject matter according to claim 32 is a method for communication of content (*e.g.*, page 5, line 32 – page 6, line 15). The method comprises storing content within a database (*e.g.*, page 6, lines 25 – 28; fig. 2A, items 22 and 140; fig. 4, item 415). The database being coupled to a server (*e.g.*, page 15, lines 10 – 11). The method also comprises uniquely identifying the stored content (*e.g.*, page 7, lines 12 – 15). After storing and identifying the content (*e.g.*, fig. 2A, item 22), receiving, at the server (*e.g.*, item 130), from a first user device (*e.g.*, fig. 2A – 2B, item 11-1) of a plurality of user devices (*e.g.*, fig. 2A – 2B, items 11-1 – 11-m, 12-1 – 12-m) an abbreviated message including identification of certain content of the stored content (*e.g.*, fig. 2A, item 22) for sending at least a portion of the stored content to a second user device (*e.g.*, fig. 2A – 2B, item 12-1) of the plurality of user devices (*e.g.*, fig. 2A – 2B, items 11-1 – 11-m, 12-1 – 12-m) as a data rich message (*e.g.*, page 7, lines 8 – 19; page 7, line 33 – page 8, line 26). The data rich message is selected from the group consisting of: video data and audio data (*e.g.*, page 7, lines 1 – 19). The method further comprises compiling, at the server (*e.g.*, figs. 2A – 2B, item 130), the data rich message using the identification of the certain content to retrieve appropriate content of the stored content (*e.g.*, figs. 2A – 2B, item 22) from the database (*e.g.*, figs. 2A – 2B, item 140) for inclusion in the data rich message (*e.g.*, page 9, lines 26 – 31). The method also comprises transmitting the compiled data rich message to the second user device (*e.g.*, page 8, lines 14 – 26).

The claimed subject matter according to claim 43 is a gateway server (*e.g.*, page 5, lines 32 – 35; figs. 2A – 2B, item 130) for use in a communication network where users direct a transfer of large bandwidth messages, to other users (*e.g.*, page 6, lines 25 – page 68, line 12; figs. 2A – 2B, item 130). The gateway (*e.g.*, page 5, lines 32 – 35; figs. 2A – 2B, item 130) comprises at least one database (*e.g.*, figs. 2A – 2B, item 140) for storing content (page 6, lines 25 – 28). The stored content (*e.g.*, fig. 2A, item 22) being uniquely identified

(e.g., page 7, lines 8 – 19). The gateway (e.g., page 5, lines 32 – 35; figs. 2A – 2B, item 130) also comprises distribution control apparatus for receiving from at least one of said users a unique identification of certain content of said stored content (e.g., fig. 2A, item 22) and for sending at least a portion of said uniquely identified content to a recipient identified by said one user (e.g., page 7, lines 21 – 31). The receiving of the unique identification of certain content of the stored content occurs after the content has been stored and uniquely identified (e.g., page 7, lines 8 – 19; page 7, line 33 – page 8, line 26).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. First Ground of Rejection – Claims 32 and 43 – 44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2003/0193951 to Fenton et al. (hereinafter, “Fenton”) in view of U.S. Patent Publication No. 2002/0103935 to Fishman et al. (hereinafter, “Fishman”).
- B. Second Ground of Rejection – Claims 33 – 42 and 45 – 50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fenton and Fishman as applied to parent claims 10 and 32 above, in view of U.S. Patent Publication No. 2004/0249768 to Kontio et al. (hereinafter, “Kontio”).

VII. ARGUMENT

- A. First Ground of Rejection – 35 U.S.C. § 103(a) Rejection over Fenton in view of Fishman

Claims 32 and 43 – 44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fenton in view of Fishman. The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. M.P.E.P. § 2142; *In re Peehs*, 612 F.2d 1287, 204 USPQ 835, 837 (CCPA 1980). In an obviousness rejection, “[u]nder § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.” *Graham v. John Deere Co.*, 383 U.S. 1, 15 – 17 (1966). With regard to the claims rejected under 35 U.S.C. § 103(a) in the current application, the Office Action does not show that the rejected claims are obvious under the framework set out in *Graham*. Specifically, the applied art does not teach all the limitations of the rejected claims.

1. Independent claim 32

Claim 32 requires, “storing content within a database . . . after said storing . . . receiving, at said server, from a first user device of a plurality of user devices an abbreviated message including identification of certain content of said stored content for sending” The Appellee asserts that the disclosure in Fenton, paragraphs [0037] and [0038] teach these limitations of claim 32. Office Action, pages 4 – 5. The Appellee asserts that paragraph [0037] “describes the core infrastructure of claimed limitation” and then proceeds to quote sections from Fenton without explaining how these sections teach the claimed limitations. Office Action, pages 4 – 5. Here, it should be noted that claim 32 is a method claim and even if Fenton describes equipment (infrastructure) that could be used in carrying out the claimed method, that does not mean Fenton teaches the claimed method. Moreover, the Appellee’s quotation of certain sections of Fenton do not show that Fenton teaches the limitations at issue. For example, the Appellee quotes from Fenton as follows:

The multimedia messaging profiles will allow a user to configure and personalize his or her multimedia messaging environment . . . A recipient will be informed of the reliability of the identity of the sender in case the sender has authorized his identity to be transmitted. The integrity of multimedia messages during transit will be assured to extent of the network capabilities. In addition, the MMS 100 will be intrinsically resistant to attempts of malicious or fraudulent use.

Office Action, page 5 (quoting Fenton, paragraphs [0037] – [0038]). These quotations from Fenton, however, simply do not teach the limitations at issue. Specifically, disclosures about personalizing a multimedia messaging environment, reliability of the identity of a sender, integrity of multimedia messages and resistance to malicious or fraudulent use individually or together do not disclose the steps of “after said storing . . . receiving, at said server, from a first user device of a plurality of user devices an abbreviated message including identification of certain content of said stored content for sending”

Indeed, Fenton describes a communication system that is different from claim 32. Fenton discloses a system for processing multimedia messages. Abstract. In Fenton, when a message is received, a determination is made whether the multimedia message should be processed using a customized process. *Id.* Additionally, a multimedia message and delivery information regarding that multimedia message in Fenton is delivered contemporaneously.

Paragraph [0041]. Because Fenton's delivery information is contemporaneous to the deliver of the message, Fenton does not teach that after storing content in a database, an abbreviated message is received at the server, from a first user device, and the abbreviated message includes identification of at least a portion of the content for sending to a second user device.

Fishman does not cure the deficiencies of Fenton. Fishman discloses content store 230 receives email data object to A, B and C but does not disclose that after content store 230 receives e-mail data object to A, B and C, receiving at content store 230, identification of certain content for sending. As such, Fishman also does not teach the limitation of claim 32 requiring that after said storing and identifying, receiving identification of certain content for sending.

In sum, the Appellee has not shown that Fenton in view of Fishman teach all the limitations of claim 32. Accordingly, the Appellant respectfully requests that the Board reverse the rejection, under 35 U.S.C. § 103(a), of claim 32.

2. Independent claim 43

Claim 43 requires a gateway server for use in a network where users direct a transfer of messages to other users. The gateway server comprises at least one database for storing content and a distribution control apparatus for receiving a unique identification of certain content of the stored content and for sending at least a portion of said uniquely identified content to a recipient identified by the user. Claim 43 further requires that the receiving of unique identification of certain content at the control apparatus occurs after the content has been stored and uniquely identified. The Appellee relies on Fishman Fig. 2 and Abstract for teaching receiving unique identification of content at a control apparatus occurs after the content has been stored and uniquely identified.

Fishman discloses that content store 230 receives an email data object directed to A, B and C. Fishman, paragraph [0034]. However, Fishman does not disclose that, after content store 230 receives the e-mail data object, content store 230 receives, from a user, unique identification of certain content of the content store and that the uniquely identified content is sent to a recipient identified by the user. Instead, Fishman discloses transforming the e-mail data object for the relevant mobile client and sending it to that client in its transformed state without input by the user. Therefore, content server 210 is not for receiving a unique

identification of certain of the stored content from a user and sending at least a portion of the uniquely identified content to a recipient identified by the user. As such, the rejection of record does not show that the art teaches the distribution control apparatus as claimed. In sum, the Appellee has not shown that Fenton in view of Fishman teaches all the limitations of claim 43. Accordingly, the Appellant respectfully requests that the Board reverse the rejection, under 35 U.S.C. § 103(a), of claim 43.

3. Dependent claim 44

Dependent claim 44 depends from independent claim 43 and thus inherits all the limitations of claim 43. It is respectfully submitted that dependent claim 44 is allowable at least because of its dependence from claim 43 for the reasons discussed above. Accordingly, the Appellant respectfully requests that the Board reverse the rejection, under 35 U.S.C. § 103(a), of claim 43.

B. Second Ground of Rejection – 35 U.S.C. § 103(a) Rejections over Fenton and Fishman in view of Kontio

Claims 33 – 42 and 45 – 50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fenton and Fishman in view of U.S. Patent Publication No. 2004/0249768 to Kontio et al. (hereinafter, “Kontio”). Dependent claims 33 – 42 and 45 – 50 depend either directly or indirectly from independent claims 32 and 43 and thus inherit all the limitations of their respective independent claims. As discussed above, Fenton in view of Fishman does not teach all the limitations of claims 32 and 43. Kontio also does not appear to teach these limitations. Kontio is directed to protecting the intellectual property rights of content producers. Abstract and paragraphs [0002] – [0008]. As such, access, copy and transfer of digital asset are controlled by digital vouchers. Paragraph [0029]. The voucher, which is stored in a mobile device, is used to allow the mobile device to access the content and download it. Paragraphs [0032] – [0033]. The mobile device may also send a voucher to a voucher network “which transforms the identity of the custodian specified in the voucher from the distributing computer to the receiving terminal.” Paragraph [0034]. “The receiving terminal can then download the content from the distributing terminal, based on the terms specified in the voucher.” *Id.*

Therefore, Kontio's teaching of devices downloading content, based on a voucher provided by the downloading device or another device, does not teach that the content is sent or delivered to a second user device based on a message from a first user device. Sending content to a device or user is different from that device or user taking active steps to download content. As such, Kontio is insufficient to cure Fenton's and Fishman's failure to teach the limitations of claims 32 and 43. Moreover, the Appellee has not shown that Fenton in view of Fishman and further in view of Kontio teaches all the limitations recited in the dependent claims. Some of those claims are discussed below.

1. Claim 34

Claim 34 requires, "said content is displayed to said first user on a device separate from said use device." The Appellee relies on Kontio, paragraph [0232] for teaching this limitation. Paragraph [0232] merely recites that "bandwidth exhaustion problem is especially severe in public access wireless networks (e.g., a kiosk serving content via Wireless LAN in a public hotspot)." Based on this disclosure in Kontio, the Appellee asserts that the "kiosk terminal could be the separate device from user device" But merely identifying a device from Kontio's discussion about exhaustion does not show that Kontio teaches the limitation "said content is displayed to said first user on a device separate from said use device." As such the Appellee has not shown that Fenton in view of Fishman and further in view of Kontio teaches the invention as claimed in claim 34.

2. Claim 37

Claim 37 requires, "said separate device receives said abbreviated message from said first user device." The Appellee relies on Kontio paragraph [0018] for teaching this limitation. Paragraph [0018], however, discloses that a connection between two Bluetooth devices is initiated by an inquiring device sending an inquiry message. A listening Bluetooth device responds. Paragraph [0018]. Here, the Appellee has cited a disclosure about communication, including an inquiry message between two devices. The Appellee then deems that the "inquiry message searching could be abbreviated message." Office Action, page 9. Merely showing a communication between devices and deeming that communication as capable of being abbreviated is insufficient to show that the applied art meets the claim limitations in the context of the claimed invention. Specifically, the Appellee has not

explained how the communication between the Bluetooth devices relates to the other limitations of claim 37 that are recited in claims 34 and 33. Clearly, the Appellee has not considered claim 37 as a whole and has used hindsight reconstruction to assert that disparate disclosures teach the claimed invention, including the limitations recited in claim 37. In sum, the Appellee has not shown that, in the context of the other limitations of claim 37, Fenton in view of Fishman and further in view of Kontio teach “said separate device receives said abbreviated message from said first user device.”

3. Claim 42

Claim 42 requires, “prior to said compiling said data rich message, identifying a version of said certain content suitable for use by said second user device.” The Appellee asserts that Fenton, [0066], lines 32 – 38 teaches a message has a version and paragraph [0028] teaches formatting, screening, deleting modifying of messages. But these assertions do not show that Fenton teaches the limitations of claim 42. For example, the Appellee has not shown that a version of the message is identified prior to the compiling of the data rich message. The Appellee has simply attempted to identify, in Fenton, aspects of the step recited in claim 42, such as a message with a version, instead of showing that Fenton teaches uses the version of content as recited in the step at issue. Therefore, the Appellee has failed to show that Fenton in view of Fishman and further in view of Kontio teaches “prior to said compiling said data rich message, identifying a version of said certain content suitable for use by said second user device.”

4. Claim 46

Claim 46 requires “transmission apparatus for sending portions of said stored content, . . . over a communication network in a non-user specific broadcast mode.” The Appellee asserts that this limitation is taught by Fenton’s disclosure that “MMS Relay 128 uses the appropriate protocol e.g. ‘STMP’ to transfer messages”. Merely asserting that a relay uses the appropriate protocol, however, is insufficient to teach that it send portions of stored content over a communication network in a non-user specific broadcast mode in the context of the other limitations of claim 46. As such, the Appellee has not shown that Fenton in view of Fishman and further in view of Kontio teaches the limitation of claim 46 requiring

“transmission apparatus for sending portions of said stored content, . . . over a communication network in a non-user specific broadcast mode.”

5. Summary of the Rejections of 33 – 42 and 45 – 50

In sum, the Appellee has not shown that Fenton in view of Fishman and further in view of Kontio teach all the limitations of claims 33 – 42 and 45 – 50. Accordingly, the Appellant respectfully requests that the Board reverses the rejection, under 35 U.S.C. § 103(a), of claim 33 – 42 and 45 – 50.

VIII. CLAIMS APPENDIX

A copy of the claims involved in the present appeal is attached hereto as the Claims Appendix.

IX. EVIDENCE APPENDIX

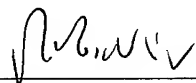
No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

X. RELATED PROCEEDINGS APPENDIX

No related proceedings are referenced in II. above, hence copies of decisions in related proceedings are not provided.

Dated: May 14, 2010

Respectfully submitted,

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CLAIMS APPENDIX

The claims on appeal are as follows:

32. A method for communication of content, said method comprising:
storing content within a database, said database being coupled to a server;
uniquely identifying said stored content;

after said storing and identifying, receiving, at said server, from a first user device of a plurality of user devices an abbreviated message including identification of certain content of said stored content for sending at least a portion of said stored content to a second user device of said plurality of user devices as a data rich message, wherein said data rich message is selected from the group consisting of: video data and audio data;

compiling, at said server, said data rich message using said identification of said certain content to retrieve appropriate content of said stored content from said database for inclusion in said data rich message; and

transmitting said compiled data rich message to said second user device.

33. The method of claim 32, further comprising:

displaying content to said first user, wherein said displaying said content includes providing information identifying corresponding said stored content.

34. The method of claim 33, wherein said content is displayed to said first user on a device separate from said use device.

35. The method of claim 34, wherein said separate device comprises a device selected from the group consisting of:

a point of sale terminal;
a kiosk; and
a display monitor.

36. The method of claim 34, wherein said separate device provides said information identifying corresponding said stored content to said first user device electronically.

37. The method of claim 34, wherein said separate device receives said abbreviated message from said first user device.

38. The method of claim 32, further comprising:
transmitting, by said first user device, said abbreviated message via a native network of said first user device.

39. The method of claim 38, wherein said native network comprises a cellular telephone network.

40. The method of claim 38, wherein said native network comprises a WLAN.

41. The method of claim 32, wherein said abbreviated message comprises a short message service (SMS) message.

42. The method of claim 32, further comprises:
prior to said compiling said data rich message, identifying a version of said certain content suitable for use by said second user device.

43. A gateway server for use in a communication network where users direct a transfer of large bandwidth messages, to other users, said gateway server comprising:
at least one database for storing content, said stored content being uniquely identified, and

distribution control apparatus for receiving from at least one of said users a unique identification of certain content of said stored content and for sending at least a portion of said uniquely identified content to a recipient identified by said one user, wherein said receiving occurs after said content has been stored and uniquely identified.

44. The gateway server in claim 43 wherein said distribution control apparatus further comprises:
selective delivery apparatus for sending said at least a portion of said uniquely identified content to said recipient only in accordance with parameters set by said recipient.

45. The gateway server in claim 43 wherein said stored content is not stored under control of said user.

46. The gateway server in claim 43 further comprising:
transmission apparatus for sending portions of said stored content, along with
corresponding said unique identity of said content, over a communication network in a non-
user specific broadcast mode.

47. The gateway server in claim 46 wherein said gateway server includes said
transmission apparatus.

48. The gateway server in claim 43 wherein said database is arranged to include at
least one message specific to one of said users.

49. The gateway server in claim 48 wherein said message specific to one of said
users is also available to selected others of said users.

50. The gateway server in claim 48 wherein said user is charged for the use of said
database according to certain parameters.

EVIDENCE APPENDIX

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

RELATED PROCEEDINGS APPENDIX

No related proceedings are referenced in II. above, hence copies of decisions in related proceedings are not provided.